

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO.: G904553**

LARRY SMITH, Employee	CLAIMANT
GOODWILL INDUSTRIES OF ARKANSAS, Self-Insured Employer	RESPONDENT
ATA WORKERS' COMPENSATION TRUST, Carrier	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

**OPINION AND ORDER FILED JANUARY 5, 2022**

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in Pulaski County, Arkansas.

Counsel for the Claimant: *pro se*.

Counsel for the Respondents: HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

The above-captioned matter came on for a full hearing on the merits on October 20, 2021, before the undersigned Administrative Law Judge. A pre-hearing Order was entered in this matter on September 16, 2021, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of the within claim;
- (2) An employer-employee relationship existed on July 30, 2018, at which time Claimant sustained a compensable injury to his right elbow;
- (3) Respondents accepted this claim and have paid a twelve (12%) impairment rating; and,
- (4) All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

The pre-hearing Order also reflected the issue to be adjudicated, as set forth below:

- (1) Additional medical treatment for Claimant's right elbow.

During preliminary discussions, it was noted that the transcript of prior proceedings conducted in this matter on June 24, 2021, along with its accompanying exhibit, would be deemed incorporated by reference into the record with respect to the present proceedings. (TR 4) It was further noted on the record that the resulting Opinion and Order in relation to the proceedings conducted on June 24, 2021, would be considered the law of the case with respect to the present proceedings. (TR 4-5) Following discussion of the stipulations, issues, and the parties' respective contentions with regard to the pre-hearing Order entered on September 16, 2021, such was introduced into the record as Commission's Exhibit No. 1 without objection. (TR 5-9) Thereafter, Respondents' Exhibit Nos. 1, 2, and 3 were likewise introduced into the record without objection. (TR 9-12) The Claimant offered no documentary evidence in support his present claim. (TR 5)

#### **Findings of Fact and Conclusions of Law**

- (1) The parties' stipulations are accepted as findings of fact herein, inclusive of the Commission's jurisdiction over this claim; and
- (2) The Claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional medical treatment in relation to his compensable right elbow injury of July 30, 2018.

#### **Applicable Law**

The party bearing the burden of proof in a workers' compensation matter must establish such by a preponderance of the evidence. See Ark. Code Ann. §§11-9-704(c)(2) and 11-9-705(a)(3). With respect to medical treatment in association with a compensable injury, Ark. Code Ann. §11-9-508(a)(1) states that:

The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other

apparatus as may be reasonably necessary in connection with the injury received by the employee.

**Testimony**

**Larry Smith**

Upon direct examination by the Commission, the Claimant testified that his right elbow injury of July 30, 2018, occurred while he was working with his assigned "bailer" which jammed when he attempted to pull it down. (TR 14-15) The Claimant agreed that the Respondents accepted the injury and paid benefits thereon, inclusive of a 12% permanent anatomic impairment rating following surgery performed by Dr. Frazier. (TR 15-16) With respect to the present matter, the Claimant testified that he sought additional medical treatment because he "can't hardly lift anything with the right arm." (TR 16) In addition, the Claimant conceded that he continues to work for Respondent Employer at a higher rate of pay than on the date of injury, has group health insurance through Respondent Employer, but has not pursued additional treatment on his own due to a lack of time. (TR 18-20) With respect to his current symptoms, the Claimant testified, *inter alia*, as follows:

Q: Well, again, I compliment you for being back at work with them and making a little more money than you were before. Tell me one more time about the symptoms in your right arm.

A: My right arm? I feel like a shock wave or something going through it right here and right here. When I lift something and a long period if I cup something it's like a strain on it. I don't know. I don't know what it is. I need a professional to look at that to see because I don't know. (TR 20-21)

Upon cross-examination, Counsel for the Respondents posited questions to the Claimant regarding the latter's release with no restrictions by Dr. Frazier on February 26, 2019, and a subsequent motor vehicle accident (hereinafter "MVA") in which the Claimant was involved on March 13, 2019, while riding on a Rock Region bus. (TR 26-28) With respect to Respondents'

Exhibit No. 3, which consists of video evidence of the MVA of March 13, 2019, the Claimant essentially agreed that such depicted him during the accident. (TR 29-30) According to the Claimant, he only presented to a hospital post-MVA to ensure that his elbow "was correct." (TR 30-31) Curiously, the Claimant also participated in the following exchange during cross-examination with respect to the MVA of March 13, 2019:

Q: And once you hit and go to the floor, you sit in the floor of the bus for, it looks like, about two minutes. Do you remember that?

A: Do I remember I sat -- yeah, I remember because on our -- our -- the move was on my -- you know, I -- because when the bus stopped we was -- you know, people was -- arm -- there was a couple other people on there that got hurt too. *I wasn't the only one.*

Q: I understand.

A: There's a lot of folks in there that got hurt on the bus and a lot was going on at that time so --

THE COURT: So -- let me interject. So --

A: -- at that time or whatever.

THE COURT: Sir, let me interject. So you were hurt on the bus too? I think I just heard you say that.

THE WITNESS: That's basically what he's trying to say.

THE COURT: Well, no, sir, you just said it.

THE WITNESS: Right. (TR 34-35; emphasis added.)

The Claimant went on to concede that he was transported by ambulance to UAMS post-MVA and ultimately received a settlement check from Rock Region Metro. (TR 35) At the conclusion of cross-examination, the Claimant testified as follows:

Q: The question is: In the two years since Frazier released you, you have not seen a doctor for that elbow --

A: No, I haven't seen no doctor.

Q: -- and put it on insurance?

A: No, sir. No, sir. (TR 49-50)

**Medical/Documentary Evidence**

Respondents' Exhibit No. 1 reflects that on February 26, 2019, Dr. G. Thomas Frazier opined that the Claimant could "increase activities as tolerated with restriction." (RX 1 at 1)

Thereafter, on March 28, 2019, Dr. Frazier recorded, *inter alia*, that:

The patient returns for follow-up of his right cubital tunnel decompression. He was doing well until approximately 2 weeks ago when he was involved in a bus accident and thinks he may have injured his elbow. He reports some mild pain about the elbow but no numbness in the ring and small fingers. I last saw him approximately 8 weeks ago and he was doing fairly well. His date of surgery is 11/14/18...The patient will continue activities as tolerated without restriction. (RX 1 at 2)

Subsequently, on or about January 15, 2020, Dr. Frazier assigned the Claimant a 12% permanent anatomic impairment rating to the latter's right upper extremity and thereafter opined, on September 27, 2021, that that the Claimant's symptoms as that time were "more likely, than not, related to the MCV (sic) and no longer related to his work injury." (RX 1 at 4-5) Although I have reviewed Respondents' Exhibit No. 2 in detail, discussion of such is not necessary for the findings of fact herein reached. Respondents' Exhibit No. 3, uncontested by the Claimant, consists of video evidence of the MVA of March 13, 2019, and reflects that the Claimant struck his right elbow on a post during such prior to falling somewhat slowly to the ground. As with Respondents' Exhibit No. 2, discussion of the transcript and resulting Opinion and Order in the prior proceedings conducted in this matter is not necessary for the findings of fact herein reached.

**Adjudication**

I note that the Claimant was a polite and courteous witness. However, I cannot overlook the fact that the Claimant has submitted no medical evidence that would support his claim for additional medical treatment in relation to his compensable right upper extremity injury of July 30, 2018, or that would otherwise contradict the opinions offered by Dr. Frazier as herein discussed, which reflect that the Claimant essentially reached maximum medical improvement as early as February 26, 2019, and no later than January 15, 2020. Consequently, there is no need to address the issue of a potential independent intervening cause in relation to the MVA of March 13, 2019, although it is duly noted that the Claimant was transported by ambulance following such in relation to his right elbow and essentially admitted that he was among those who had been "hurt" during the accident.

In sum, I am constrained and compelled to find that the Claimant has simply failed to meet his burden of proof with respect to the additional benefits sought in the present matter.

**ORDER**

Based on the foregoing discussion, including my observation of the witness and his testimony, review of the hearing transcript, the documentary evidence supplied by the Respondents, and application of the statutory and case law cited above, I specifically find that the Claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional medical treatment in relation to his compensable right upper extremity injury of July 30, 2018

This claim is respectfully denied and dismissed, and the Respondents are ordered and directed to pay the Court Reporter's fee within thirty days of billing for such if they have not already done so.

Smith -- G904553

IT IS SO ORDERED.

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TERRY DON LUCY  
Administrative Law Judge